



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

October 25, 2007

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The Honorable Sean J. McLaughlin
United States Courthouse and Post Office
17 South Park Row
Room A-250
Erie, PA 16501

~~CONFIDENTIAL SETTLEMENT LETTER~~

Re: Kerwin v. McConnell
05-93

Dear Judge McLaughlin:

As per your request, I am submitting the following with regard to Mr. Kerwin's assertions that the defendant has failed to provide a response to Interrogatory #2, despite an Order entered by Judge Baxter requiring him to do so.

The procedural background relevant to this issue is as follows. On December 16, 2005, counsel for the defendant received the plaintiff's First Set of Interrogatories and First Request for Production of Documents. On January 24, 2006, plaintiff filed a Motion to Compel responses to his discovery. (See Doc. #41.) On February 14, 2006, an Order granting the Motion to Compel and requiring the defendant to provide the requested discovery by February 22, 2006 was entered. (See Doc. #43.) On February 16, 2006, plaintiff filed a Motion for Sanctions. (See Doc. #44.) On February 22, 2006, defendant served the responses to the First Set of Interrogatories and First Request for Production of Documents. On March 2, 2006, plaintiff filed a Letter to Judge Baxter regarding his Motion for Sanctions and Second Motion for Sanctions. (See Doc. #51.) On March 3,

2006, Judge Baxter entered a minute entry denying both Motions for Sanctions. (See Doc. #54.)

In response to the plaintiff's inquiry during the pretrial conference on October 19, 2007, I have thoroughly reviewed the file regarding Interrogatory #2, which requested the names and locations of all of the inmates transported on the bus on which the plaintiff was transported from Smithfield to Albion on July 15, 2003. In so doing, I was able to locate an e-mail dated February 21, 2006, from DOC personnel indicating that the DOC records of transport did not go back in time to include records regarding the transport on July 15, 2003, therefore, the information sought by the plaintiff in Interrogatory #2 was not available when the discovery responses were timely filed, as per Judge Baxter's Order granting the Motion to Compel.

The file also indicates that the plaintiff made an inquiry regarding the identities, prison identification and addresses of the prisoners on the transport bus on July 15, 2003 in an e-mail he sent on September 20, 2007, to Ms. Passarelli, who was counsel for the defendant prior to my involvement in the case. On September 21, 2007, Ms. Passarelli forwarded to the plaintiff, the letter he referenced at the October 19th pretrial conference, providing the plaintiff with a copy of the discovery response and indicating that the specific information the plaintiff was requesting was not kept this long and was therefore not available.

In short, the information the plaintiff is seeking regarding a transport of inmates in July of 2003 was no longer available at the time his discovery requests (which were served in December of 2005) were responded to by the defendant. Therefore, the defendant is unable to provide the names and locations of any of the other prisoners on the transport bus, other than inmate William Clark (for whom a writ has already been issued) and inmate Kenneth Valentine (who is no longer in DOC custody).

Sincerely,

A handwritten signature in black ink, appearing to read "Tracey A. Wilson".

Tracey A. Wilson
Senior Deputy Attorney General

cc: Ryan Kerwin